



## Complaints Process & Outcomes under the Personal Information Protection Act (PIPA)

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### Investigation & Mediation

Section 36 of PIPA empowers the Information & Privacy Commissioner to conduct investigations to ensure compliance with PIPA, either in response to a complaint or on his own motion. Complaints to the Commissioner can be made *by* individuals *about* organizations. The Commissioner typically first refers matters to a Portfolio Officer on his staff for **investigation and mediation**, pursuant to section 49 of the Act. The vast majority of complaints are resolved in this way.

When working with the Commissioner's Office, it is important to remember that it is an **offence** to make a false statement or mislead the Commissioner or his delegate or to obstruct their duties. A list of offences and related fines is provided at the end of this document.

The Portfolio Officer may determine whether the organization contravened PIPA, and in response, may make constructive recommendations to the organization to improve its compliance with the legislation. The parties will receive a letter of finding with recommendations from the Portfolio Officer. If the recommendations are accepted by the organization, and are satisfactory to the complainant, the matter is considered **resolved** and the complaint is closed.

If the matter has educational value for the public, sets some best practices, or addresses an issue across an industry, the Commissioner's Office will **publish** the non-binding investigation report or case summary naming the organization. The Commissioner has authority to publish such findings under section 38(6) of PIPA.

### Inquiries & Orders

If the complainant is not satisfied, the organization chooses not to implement the recommendations offered by the Portfolio Officer, or resolution cannot otherwise be achieved, the complainant *may* request that the Commissioner conduct an **inquiry** into the matter in accordance with section 50(1) of PIPA. The Commissioner has discretion whether or not to hold an inquiry.

If the Commissioner elects to conduct an inquiry, adjudication staff will send a Notice of inquiry to the parties. The Commissioner or an appointed Adjudicator will accept submissions from the parties at a *de novo* hearing, which may be conducted orally or in writing. *De novo* means that the Commissioner or Adjudicator will decide all issues of fact and law independent of the investigation conducted by the Portfolio Officer. A written **order** is then issued, as required by section 52(1) of the Act.

The Commissioner's order may require specific action by an organization as provided by section 52(2) and (3) of PIPA. For example, the Commissioner could: direct the organization to give or refuse an individual access to records; require an organization to stop collecting, using or disclosing personal information, or require an organization to destroy personal information obtained in contravention of PIPA.

An order is **legal and binding** on the organization and maybe filed as an order of the Court of Queen's Bench. The Commissioner may bring an application for contempt, in the Court of Queen's Bench, for failure to comply with an order. Failure to comply with an order is also an offence under section 59(1).

There is no 'appeal' of the Commissioner's order, which is final (section 53), and the organization has 50 days to comply with the order (section 54). However, a party may seek judicial review of an order. That application must be made to the Court of Queen's Bench.

All orders are **published** naming the organization, again, as permitted by section 38(6) of PIPA.

## **Damages**

The Act also provides for a potential remedy in the form of a civil suit. Under section 60, where the Commissioner has issued an order against an organization following an inquiry, an affected individual has a **cause of action** for damages against the organization. An affected individual also has a cause of action against an individual or organization convicted of an offence under PIPA.

## **Offences**

Matters are generally disposed of under PIPA by investigation and mediation or by an inquiry by the Commissioner. However, in the course of undertaking these activities, if the Commissioner believes that conduct by an organization or individual may be an offence, the Commissioner may refer the matter to the Crown for **prosecution**. According to section 59(1), the **offences** under PIPA are as follows:

- *wilfully* collecting, using or disclosing personal information in contravention of PIPA;
- *wilfully* attempting to gain or gaining access to personal information contrary to the Act;
- disposing of or altering, falsifying, concealing or destroying personal information or any record relating to personal information, or directing another person to do so, with an intent to evade a request for access to the information or the record;
- obstructing the Commissioner or an authorized delegate of the Commissioner in the performance of the Commissioner's duties, powers or functions under the Act;
- *knowingly* making a false statement to the Commissioner, or *knowingly* misleading or attempting to mislead the Commissioner, in the course of the Commissioner's performance of the Commissioner's duties, powers or functions under this Act;
- failing to comply with an order made by the Commissioner under PIPA.

The Commissioner does not have authority to apply penalties or levy fines. Rather, fines are assessed by an Alberta Provincial Court judge after successful prosecution; in other words, following a conviction.

## **Fines**

According to section 59(2) of PIPA, individuals convicted of an offence under the Act may be subject to **fines** up to \$10,000; organizations may be fined up to \$100,000 after a conviction. These fines are assessed by a Provincial Court judge, not the Commissioner.

*For more information, consult our website at [www.oipc.ab.ca](http://www.oipc.ab.ca)  
or call (403)297-2728 or 1-888-878-4044.*